

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL McKINNON,	:	
Plaintiff	:	
	:	CIVIL ACTION NO. 1:06-CV-1415
	:	
	:	(Judge Kane)
	:	
CARS ON CREDIT, INC., <u>et al.</u>,	:	
Defendants	:	

MEMORANDUM

Before the Court is Plaintiff's pro se Complaint (Doc. No. 1) and Application to Proceed In Forma Pauperis (Doc. No. 2). Plaintiff's application to proceed in forma pauperis is hereby granted, however, Plaintiff's complaint will be dismissed for failure to state a claim upon which relief can be granted.

The Court is required to review a pro se plaintiff's complaint prior to service of process under 28 U.S.C. § 1915(e). This section states:

- (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--
 - (A) the allegation of poverty is untrue; or
 - (B) the action or appeal--
 - (i) is frivolous or malicious;
 - (ii) fails to state a claim upon which relief may be granted; or
 - (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e).

Plaintiff is a resident of Harrisburg, Pennsylvania and is presently incarcerated in the United States Penitentiary Big Sandy in Inez, Kentucky. (Doc. No. 1 at 3.) Defendants are Cars On Credit, Inc., a Pennsylvania corporation where Plaintiff worked prior to being arrested, and four Cars On Credit employees. Plaintiff alleges that Defendants "conspired to deprive [him] of

his interest in [Cars On Credit, Inc.], sold all of his automobiles at the company without compensating him for the sells [sic], then maliciously and sardonically extorted the customers, who plaintiff had financed automobiles to, into paying the remaining payments owed on their automobiles to them . . . instead of plaintiff” (Doc. No. 1 at 4.)

Plaintiff asserts that this Court has subject matter jurisdiction over his claims pursuant to 28 U.S.C. § 1331, claiming that Defendants’ actions violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq. (Doc. No. 1 at 2.) The FLSA requires employers to pay their employees at least a specified minimum hourly wage for work performed, and to pay one and one-half times the employee’s regular rate of pay for hours worked in excess of forty hours per week. De Asencio v. Tyson Foods, Inc., 342 F.3d 301, 306 (3d Cir. 2003). Plaintiff does not allege that he was paid below minimum wage or that he worked uncompensated overtime hours. Because Plaintiff’s allegations do not raise a cause of action under the FLSA, the Court does not have subject matter jurisdiction over Plaintiff’s claims. Accordingly, Plaintiff’s Complaint must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted.

An appropriate Order shall follow.

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MICHAEL McKINNON,
Plaintiff

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(Judge Kane)

CARS ON CREDIT, INC., et al.,
Defendants

ORDER

AND NOW, this 31st day of July, 2006, **IT IS HEREBY ORDERED THAT** Plaintiff's Application to Proceed In Forma Pauperis is **GRANTED** (Doc. No. 2) and his Complaint is **DISMISSED**. The Clerk of Court is directed to close the file.

S/ Yvette Kane
Yvette Kane
United States District Judge